

Application Serial No. 10/520,558
Attorney Docket No. 10191/3712
Reply to Office Action of December 3, 2007

AMENDMENTS TO THE DRAWINGS:

The attached Replacement Sheets, which include Figs. 1 to 4, replace the original sheets, as suggested. No new matter has been added. Approval and entry are respectfully requested.

Attachments: 2 Replacement Sheets

REMARKS

Claims 8 to 14 are now pending in the present application.

As to the IDS, the foreign references should have been provided by the International Searching Authority. Nevertheless, to facilitate matters, copies of the foreign references (cited in the previously filed IDS) accompany this response. It is respectfully requested that they be considered and made of record.

It is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

The drawings were objected to and have been amended, as suggested. The attached Replacement Sheets, which include Figs. 1 to 4, replace the original sheets, as suggested. No new matter has been added. Approval and entry are respectfully requested.

Claims 8 to 14 were rejected under 35 U.S.C. 112, first paragraph, as to the enablement requirement.

Claims 8 and 13 have been rewritten to clarify the meaning of *determining* as referred to in the specification. Claims 8 and 13, as presented, include the feature of the sitting position *influencing* an evaluation of the at least one signal. Support and enablement for this feature can be found throughout the specification, including, for example, at page 2, lines 10-15; page 4, lines 10-17; page 5, lines 2-8; and page 6, lines 21-27. Accordingly, claims 8 to 14 are allowable.

Claims 8 to 14 were rejected under 35 U.S.C. 112, second paragraph, as indefinite.

Claims 8 and 13 have been rewritten to clarify the meaning of *determining* as referred to in the specification. Claims 8 and 13, as presented, include the feature of triggering a second stage of the belt tensioner as a function of a crash severity and a sitting position, the crash severity being determined by at least one signal derived from an acceleration ascertained during a collision, and the sitting position *influencing* an evaluation of the at least one signal. This claim language makes clear that the crash severity is determined by at least one signal derived from an acceleration. Accordingly, the at least one signal must be *derived from an acceleration*. The at least one signal need not be characterized as always an acceleration signal or a generic signal. The at least one signal *may* be an acceleration signal or, for example, as discussed in the specification, it *may instead* be a speed signal derived from an acceleration signal. Further, the *evaluation* of the at least one signal derived from an acceleration is *influenced* by the sitting position. This feature is also clear, as described in the

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specification, for example, at page 2, lines 10-15; page 4, lines 10-17; page 5, lines 2-8; and page 6, lines 21-27. Accordingly, claims 8 and 13 are allowable, as are their dependent claims.

Claim 11 has been rewritten to clarify the subject matter recited therein. “The second airbag stage” has been changed to “a second airbag stage.” Claim 11, as presented, includes the feature of the second stage being triggered with a second airbag stage. It is clear from this claim language that the second stage must be triggered with any second stage of an airbag deployment. Base claim 8, as presented, includes the feature of a first airbag stage.

Claim 12 has been rewritten to clarify its subject matter.

In view of the foregoing, it is respectfully requested that the indefiniteness rejections be withdrawn as to claims 11 and 12.

Claims 8 to 14 were rejected under 35 U.S.C. 101 as directed to non-statutory subject matter.

In fact, all of the claims include statutory subject matter. The burden “to either amend the claim or make a showing of why the claim is eligible for patent protection” shifts to the applicant only “[a]fter USPTO personnel identify and explain in the record the reasons why a claim is for an abstract idea with no practical application.” MPEP § 2106(IV)(D). In addition, “[i]f the record as a whole suggests that it is more likely than not that the claimed invention would be considered a practical application of an abstract idea, natural phenomenon, or law of nature, then USPTO personnel should not reject the claim.” *Id.* The statement by the Examiner that “[s]ignals are non-statutory subject matter” is wholly unsubstantiated, and especially since the claimed subject matter is not directed to signals. Instead, the claimed subject matter is to a method and a device for triggering a two-stage belt tensioner that includes the use of at least one signal.

It is, therefore, respectfully submitted that claims 8 to 14 are to statutory subject matter under 35 U.S.C. 101.

Claims 8 to 10 and 13 and 14 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,400,487 (“Gioutsos”).

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102(b), the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See Scripps Clinic & Research Foundation v. Genentech, Inc., 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the Office Action does not meet this standard, for

example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; and see Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'l. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

Claims 8 and 13 have been rewritten to further clarify their subject matter. Claim 8, as presented, includes the feature of *triggering a first stage of the belt tensioner before a first airbag stage and triggering a second stage of the belt tensioner as a function of a crash severity and a sitting position*. Claim 13, as presented, includes the feature of *a control unit configured to trigger a first stage of a two-stage belt tensioner before a first airbag stage, the device further configured to trigger a second stage of the belt tensioner as a function of a crash severity and a sitting position* recites a similar feature.

In contrast, the “Gioutsos” reference refers to the timing of two stages of airbag inflation, one with a faster rate of inflation than the other. The last sentence of the “Gioutsos” specification mentions that it may be used with other gas-operated safety restraints. Still, the “Gioutsos” reference does not disclose nor suggest the feature of *triggering a first stage of the belt tensioner before a first airbag stage and triggering a second stage of the belt tensioner as a function of a crash severity and a sitting position*, as provided for in the context of the claimed subject matter. The “Gioutsos” reference does not disclose nor suggest the feature of triggering a first stage of a belt tensioner before a first airbag stage. Furthermore, the “Gioutsos” reference focuses on the order and the timing of the firing of gas generators with different quantities of gas generated over time. Apparently, in some situations, it is desirable for the hard stage of airbag inflation to be the first stage, and in other situations, it is desirable for the softer stage to be the first stage. The “Gioutsos” reference then mentions at the end of the specification that it may be used with other gas-operated safety devices. This does not disclose nor suggest the features of claims 8 or 13,

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which are to a first stage of a belt tensioner followed by a first airbag stage, which is followed by a second stage of the belt tensioner.

Accordingly, claims 8 and 13 are allowable, as are their respective dependent claims 9 to 12 and 14.

Claims 11 and 12 were rejected under 35 U.S.C. 103(a) as being unpatentable over the “Gioutsos” reference.

In rejecting a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claims 11 and 12 depend from claim 8, and are therefore allowable for essentially the same reasons as claim 8, since the “Gioutsos” reference does not cure -- and is not asserted to cure -- the critical shortcomings of the “Gioutsos” reference as applied to claim 8.

In summary, all of pending claims 8 to 14 are allowable.

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Conclusion

In view of the foregoing, it is respectfully submitted that all pending claims 8 to 14 are in condition for allowance. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is respectfully requested.

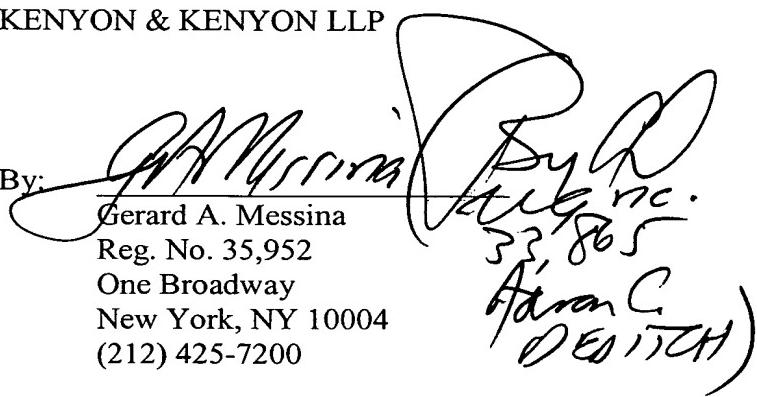
Respectfully submitted,

KENYON & KENYON LLP

Dated: 2/1/2008

By:

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The handwritten signature of Gerard A. Messina is written over the typed name. It includes the initials 'G.A.M.' followed by 'By R.', the date 'FEB 1 2008', and the number '33,865'. Below the signature, the name 'Adam C' and the acronym 'DES/TCH' are handwritten.

CUSTOMER NO. 26646